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BEFORE THE DEPARTMENT OF
NATURAL RESOURCES AND CONSERVATION
OF THE STATE OF MONTANA

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IN THE MATTER OF THE APPLICATION FOR)
BENEFICIAL WATER USE PERMIT NO. 22249-s41H) FINAL ORDER
BY HAROLD E. AND JUDY A. HUNTER)

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On April 2, 1979, an Application for Beneficial Water Use Permit was filed with the Department of Natural Resources and Conservation by Harold E. and Judy A. Hunter. This application seeks 90 gallons per minute up to 5 acre feet per year for new sprinkler irrigation of 3 acres more or less, in Section 18, Township 2 South, Range 7 East, from June 1 to September 30, inclusive, of each year. The Applicant also claims the right to use this quantity of water for fire protection for his personal residence. The source of supply is claimed to be Pitcher Creek or Solin Creek, a tributary of Rocky Canyon Creek, and the water is to be diverted at a point located in the NW1/4 SW1/4 NE1/4 Section 18, Township 2 South, Range 7 East, all in Gallatin County. The pertinent portions of this application were duly published for three successive weeks in the Bozeman Daily Chronicle, a newspaper of general circulation printed and published in Bozeman, Montana.

On September 7, 1979, an Objection to the granting of this application was filed with the Department of Natural Resources and Conservation on behalf of the Montana Power Company. That objection alleges that the proposed appropriation is from Pitcher

Creek in Gallatin County, Montana, and upstream from the Canyon Ferry, Hauser, Holter, Black Eagle, Rainbow, Ryan, Cochrane, and Marony dams and reservoir impoundments and that there is insufficient unappropriated water available for the proposed use without adversely affecting the downstream water rights of the Montana Power Company and other senior appropriators. On September 19, 1979, an objection to the granting of this application was filed with the Department on behalf of the Bureau of Reclamation of the United States of America. That objection claims and alleges that unappropriated water is not available throughout the period of appropriation and that any new irrigational development will adversely affect the prior rights of the Bureau of Reclamation's Canyon Ferry and Helena Valley units. On September 13, 1979, an objection to the granting of this application was filed with the Department by Elard and Mildred Bassett. This objection sets forth water rights owned or claimed by the Objector and implicitly claims that the granting of the application would work injury to these rights.

On the 29th day of May, 1981, a hearing in the above-entitled matter was set for June 16, 1981, in Bozeman, Montana. The Applicant appeared by Mr. Hunter at this hearing. The Bureau of Reclamation appeared and was represented by Counsel Richard Aldrich. Montana Power Company appeared and was represented by Counsel Jock Anderson of Gough, Shanahan, Johnson and Waterman. Mr. and Mrs. Bassett appeared in their own behalf. During the course of the hearing, parties hereto apparently came to an agreement as to the proper disposition of this application. The

Department in its own behalf also does not object to the issuance of this a permit in this matter so long as the following conditions are observed.

WHEREFORE, Application for Beneficial Water Use Permit No. 22249-s41H is hereby granted to Harold E. and Judy A. Hunter to appropriate 90 gallons per minute up to 5 acre-feet per year for new sprinkler irrigation from June 1 to September 30, inclusive, of each year. The place of use shall be three (3) acres more or less located in the NE1/4 of Section 18, Township 2 South, Range 7 East, all in Gallatin County. The source of supply shall be Pitcher Creek, a tributary of Rocky Canyon Creek, at a point in the NW1/4SW1/4 NE1/4 Section 18, Township 2 South, Range 7 East, all in Gallatin County. The priority date of this permit shall be April 2, 1979, at 11:20 A.M. Pursuant to MCA 85-2-113(3) as implemented in ARM 36.12.105, the Applicant may also use waters in bona fide emergencies for the fire protection of his personal residence.

This application is granted subject to the following express conditions, limitations and restrictions.

1. This permit is subject to all prior and existing rights and to any final determination of such rights as provided by Montana law. Nothing herein shall be construed to authorize the Permittee to withdraw water to the detriment to any degree of any senior appropriator.

2. The Permittee shall in no event cause to be diverted from the source of supply more water than is reasonably required for the irrigation of the above-described lands. At all times when

water is not reasonably required for use in the above-described fashion, Permittee shall cause the water to be left in Pitcher Creek.

3. The Permittee shall in no event withdraw water or cause water to be withdrawn from the source of supply unless and until such time as the Bureau of Reclamation's Canyon Ferry facility is spilling water and inflows to that facility exceed 7,000 cubic feet per second. To implement this condition, employees or agents of the Bureau of Reclamation shall immediately notify the Department at the following address at such times that spills commence at the Canyon Ferry facility and inflows at said facility exceed 7,000 cubic feet per second, and again at such times as these spills cease. Notification shall be sent to the:

Helena Area Field Office
Department of Natural Resources and Conservation
28 S. Rodney
Helena, Montana, 59601
(406) 449-3634

Upon receipt of such notification, the Department through its agents and employees shall immediately notify the permittee herein of the fact of such spillage and volume of flow or lack of spillage and volume of flow at the following address:

Harold E. or Judy A. Hunter
1755 Moffitt Gulch Road
Bozeman, Montana 59715
(406) 587-1628.

Spill as referred to herein refers to waters passing through the spillway or the river works outlets of the Canyon Ferry facility, and reflects generally all water not being passed through the turbines at Canyon Ferry or not otherwise being diverted for beneficial purposes.

4. In addition to all the other conditions delineated herein, the Permittee shall in no event divert or cause to be diverted any waters from the source of supply unless and until spills occur at the Montana Power Company's Cochrane Dam facility. Montana Power shall immediately notify the Department at the foregoing address of the fact of the commencement of any such spills and of the fact of the cessation of any such spills. The Department shall forthwith in turn notify the Permittee herein of the fact of such spills or lack thereof. Spill refers to waters passing over the Cochrane Dam facility and not otherwise being used for power production.

5. Permittee shall diligently adhere to the terms and conditions of this Order. Failure to observe the terms and conditions herein may result in revocation of this permit.

6. The Permittee, at the discretion of the Department, which discretion shall be exercised reasonably, shall install adequate metering devices at the Department's request such that the flow rate and volume of water withdrawn might be recorded.

7. Pursuant to its authority described in MCA 85-2-115 (1979), any employee or agent of the Department may enter upon any land of any of the parties hereto upon giving reasonable notice to the land owner of its intentions to enter upon said land for the purpose of implementing the conditions.

8. Nothing herein shall be construed in any way to affect or reduce the Permittee's liability for damages which may be caused by the exercise of this permit, nor does the Department in issuing this permit acknowledge any liability for such damages,

even if the same are the necessary and unavoidable consequences of the exercise of this permit.

9. The Permittee shall proceed with reasonable diligence in the completion of the appropriation as described herein.

DONE this 20th day of August, 1981.



Matt Williams, Hearing Examiner
Department of Natural Resources
and Conservation
32 S. Ewing, Helena, MT 59620
(406) 449-3962